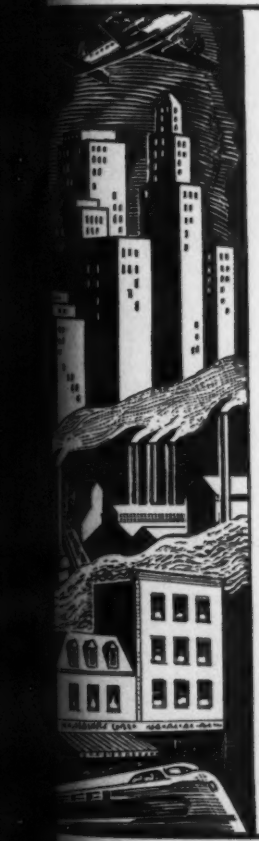
The
ORPORATION JOURNAL

Trademark ®

...he incorporation, qualification and statutory repre...ation of corporations, The Corporation Trust Com..., C T Corporation System and associated companies deal with and act for lawyers exclusively.

...l. 19, No. 9 JUNE 1950 Complete No. 364



Withdrawal Before or After July 1

In a number of states, the completion of the contemplated withdrawal of a corporation before July 1 may make unnecessary the filing of certain reports and the payment of certain fees . . . . . Page 163

•

Minnesota court upholds corporate power to change par value and dividend preference rights of preferred stock, including power to cancel accrued but undeclared dividends, and to issue new preferred of lesser par value with smaller dividend rate . . . . Page 164

...lished by The Corporation Trust Company and Associated Companies

SPOT STOCKS

Does a client of yours, under the
of competition, carry spot stocks of his product at fa
shipping points in order to give quick delivery on e

Can you help him avoid trouble from that
business policy by explaining the legal requirement
need of his company to be qualified as a foreign corp
in each state in which a stock of goods is carried?

Our pamphlet, "More Sales With Spot St
makes an easy way for a lawyer to draw his client's a
to the subject. Copies are available at the CT office near

CT SYSTEM

The Corporation Trust Company
C T Corporation System
and Associated Companies

Albany 6	4 S. Hawk Street	Jersey City 2	15 Exch
Atlanta 3	57 Forsyth Street, N.W.	Los Angeles 13	510 S. Spri
Baltimore 2	10 Light Street	Minneapolis 1	409 Second A
Boston 9	10 Post Office Square	New York 5	120
Buffalo 3	295 Main Street	Philadelphia 9	123 S. Br
Chicago 4	208 S. La Salle Street	Pittsburgh 22	535 Smithfi
Cincinnati 2	441 Vine Street	Portland, Me. 3	57 Exch
Cleveland 14	925 Euclid Avenue	San Francisco 4	220 Montgom
Dallas 1	1309 Main Street	Seattle 4	1004 Second
Detroit 26	719 Griswold Street	St. Louis 2	314 North B
Dover, Del.	30 Dover Green	Washington 4	1329 E. St.
Wilmington	100 West 10th Street		

The
CORPORATION JOURNAL

Trademark ®

JUNE 1950

Contents

Recent Decisions

Management won the proxy fight after a stormy meeting which had been in progress for 17 days—but the minority committee contends that the report of the Judges of Election was *"biased, prejudiced and without merit"* and they intend to challenge the election results in court.

Inspectors or Judges of Election provided by C T assure both sides of impartial, expert, expeditious examination and tabulation of proxies and votes. C T can furnish Inspectors and as many assistants as the volume of proxies require—to serve anywhere in the United States.

a decisive date

Withdrawal Before and After July 1

WHERE the withdrawal from one or more states by a licensed foreign corporation is being contemplated shortly before July 1, counsel has found by experience that if formal withdrawal is consummated and business is discontinued before July 1, this will, in a number of states, discussed below, result in eliminating liability for the filing of certain tax returns and the payment of related taxes which will otherwise become due if formal withdrawal and discontinuance of business is delayed until shortly after July 1.

In *Arizona*, for instance, such formal withdrawal prior to July 1 would make unnecessary the filing of the Annual Report and the payment of the accompanying Registration Fee which are normally due during June.

The *Florida* Annual Report and Fee are ordinarily expected of corporations whose names remain upon the state's records as of July 1. Withdrawal before that date would, of course, remove a withdrawing corporation's name from the list of those from whom the report is expected that year. Somewhat the same situation exists with respect to the filing of the *Indiana* Annual Report, due within 30 days after June 30. There, too, withdrawal before July 1 should likewise result in removing the withdrawing corporation's name from the roster of those expected to file this Report.

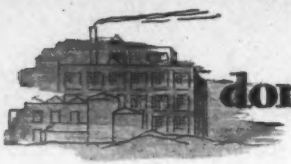
The *Illinois* Franchise Tax is presently paid to July 1. Withdrawal, if completed prior to July 1, would make unnecessary the payment of the Franchise Tax for the year beginning July 1.

Since, under 1949 *Oklahoma* legislation, it is provided that the franchise tax is for the year beginning July 1, and as the Franchise Tax Report is due between July 1 and August 31, formal withdrawal prior to July 1 should serve to eliminate liability for a payment of this tax in the current year.

The *Oregon* Annual License Fee is exacted for the year beginning July 1. Formal withdrawal prior to July 1 should make unnecessary the payment of this Fee for the ensuing year.

The *Washington* Annual License Fee, due on or before July 1, and therefore withdrawal prior to that date should make unnecessary the payment of this fee in the current year. Similarly, in *West Virginia* and *Wyoming*, where the Annual License Taxes relate to the year beginning July 1, formal withdrawal in either state consummated before July 1 should serve to eliminate liability for these taxes which would normally be due on July 1.

Tangible personal property in the *District of Columbia*, other than motor vehicles, is assessed as of July 1. The disposition of property prior to July 1, owned and located in this jurisdiction, has been found to eliminate liability for taxes on such property which would otherwise arise by reason of ownership on that July 1.



domestic corporations

DELAWARE

Relief granted in stockholder's suit attacking fairness of plan of dissolution.

In a decision, after final hearing, in a stockholder's suit attacking the fairness of a plan of dissolution, the Court of Chancery, New Castle County, concluded that the plan, which provided principally for a distribution of assets in kind, and no alternative being provided, was unfair to the small shareholders. The court did not enjoin the effectuation of the plan absolutely, but indicated it would enjoin it pending a determination of the appropriate fair value per share of the defendant's stock by a master as an alternative to a distribution in kind.

Shrage (Central Hanover Bank & Trust Co., Intervenor) v. Bridgeport Oil Co., Inc., 71 A. 2d 882. Arthur G. Connolly, Januar D. Bove, Jr., of Wilmington (Harry J. Halperin and Samuel L. Scholer of Halperin, Natanson & Scholer of New York City, of counsel), for plaintiff and intervening plaintiff. Hugh M. Morris of Morris, Steel, Nichols & Arsht of Wilmington, for defendant.

MINNESOTA

Corporate power upheld to change par value and dividend preference rights of preferred stock, including power to cancel accrued but undeclared dividends, and to issue new preferred of lesser par value with smaller dividend rate.

Plaintiff below, a preferred stockholder in defendant corporation, sought to recover the par value of 33 shares of its cumulative preferred stock of $100 par value and accumulated dividends at seven per cent per annum. The defense was that, pursuant to statutes in force when the stock was issued and when defendant subsequently amended its articles of incorporation, defendant by such an amendment cancelled not only the stock held by plaintiff by issuing in lieu thereof new preferred stock having a par value of $70 per share and entitled to dividends at five per cent per annum beginning January 1, 1936, but also the accumulated undeclared and unpaid dividends on plaintiff's stock. Plaintiff and his assignors did not assent to the amendment and had consistently demanded their rights to the stock originally issued to them.

The Supreme Court of Minnesota considered the propriety, under the statutes, of the procedure followed by the corporation in amending its articles

so as to substitute, for the cumulative preferred stock having a par value and entitled to dividends at a stipulated rate, new noncumulative preferred stock having less par value and entitled to dividends at a lesser rate, and whether, in such a case, the corporation had the power by such an amendment to cancel dividends on the old stock which at the time of the amendment had accrued by the lapse of time, but had not been declared. The court, after an examination of the applicable statutes (G. S. 1913, Secs. 6185 and 6193—MSA Secs. 300.45 and 300.54), and pertinent decisions of Minnesota and other states, concluded that "defendant had the power by amendment to change both the par value of its preferred stock and the preference right thereof to receive dividends thereon. This included, as incidental thereto, the power to cancel accrued but undeclared dividends and to issue new preferred stock embodying the amendments as to a substitute for the old stock."

Sherman v. Pepin Pickling Co. et al., 41 N. W. 2d 571. George, Brehmer & McMahon, C. Stanley McMahon of Winona, for appellants. John A. Burns of St. Paul, for respondent. Alfred E. LaFrance of Racine, Wis., amicus curiae.

NEW YORK

Former secretary and accountant of company directed to deliver its books and other papers to it, although he alleged they were not in his possession.

Petitioner corporation sought an order directing the respondent, a former director and secretary of petitioner, to deliver to it all books, records, tax returns and other papers in his possession which were the property of the petitioner. Respondent stated, in an "answer" which the Supreme Court, New York County, Special Term, Part I, regarded as "but an opposing affidavit, that he did not have any books, records, tax returns and other papers belonging to the corporation, the only papers in his possession relating to petitioner being his own work sheets which he used as the accountant for the corporation, which were his personal property; and that he was entitled to retain them in any event for fees due him from petitioner for services rendered to it as its accountant which had not been paid."

The court overruled a contention "that the application must fall if respondent states he does not have the books, records, etc., in his possession," as this was no defense, indicating it was his duty under such circumstances, to regain them and to deliver them to his successor. The motion for an order directing respondent to deliver the books and other material to petitioner was, therefore, granted.

Matter of Rogers Engraving Co., Inc.,* New York Supreme Court, New York County, Special Term, Part I, March 24, 1950; 123 N.Y.L.J. 1052. Commerce Clearing House Court Decisions Requisition No. 429866.

* The full text of this opinion is printed in the CCH **New York Corporation Law Reporter**, page 9459.

Motion to set aside service denied where made on Secretary of State who mailed copy, not received, to defendant's incorrect address shown in its certificate of incorporation.

The text of the opinion of the Supreme Court, New York County, is as follows: "This is a motion to set aside the service of a summons and complaint upon the corporate defendant made pursuant to sections 24 and 25 of the Stock Corporation Law. Defendant did not receive a copy of the summons and complaint mailed by the secretary of state by reason of its own mistake in designating an incorrect address in its certificate of incorporation. However, in June, 1949, defendant acquired knowledge of the pendency of the action and the present motion is the only substantial legal step taken by it since then. In the meantime and pursuant to a judgment of foreclosure the property was sold in November, 1949, to an innocent purchaser for value who has caused considerable improvements to be made. Defendants' conduct and failure to act within a reasonable time with full knowledge of the proceedings constitute such laches which together with a lack of showing of a meritorious defense do not justify a court of equity in granting the requested relief. Motion denied."

Rosa v. Group Homes, Inc., New York Supreme Court, New York County, Special Term, Part I, March 21, 1950; 123 N. Y. L. J. 998. Commerce Clearing House Court Decisions Requisition No. 429589.

Enactment of Sec. 61-b, G.C.L., requiring plaintiffs to give security in derivative suits, held not to restrict power of State Supreme Court to modify or vacate, for sufficient cause, order made in the course of an action.

In *Baker et al. v. Macfadden Publications, Inc.*, 59 N. Y. S. 841, (The Corporation Journal, April, 1946, page 126), the New York Supreme Court, Appellate Division, First Department, Section 61-b of the General Corporation Law was held valid. This section permits a corporate defendant to require the plaintiffs in a derivative suit to give security for expenses under certain circumstances related to the amount of stock held.

Upon appeal to the Court of Appeals of New York, six questions were certified to that court. Five of these involved the constitutionality of Sec. 61-b. These the court did not answer, as it regarded them as academic, since the court had already held the section valid in prior litigation. The sixth question, which the court answered in the affirmative, was as follows: "6. Was the provision in the order for security at Special Term that, in the event that joinder in the motion is effected by the plaintiffs of stockholders holding Five (5%) per cent of the outstanding shares of any class of stock of the corporation, or shares having a market value in excess of Fifty Thousand ($50,000) Dollars, plaintiffs might make application to vacate said order, properly included in said order?" The striking out of this

provision by the Appellate Division was regarded as error, as it put a construction upon Section 61-b which failed to take proper account of a long recognized practice which the Court of Appeals stated as follows: "The New York Supreme Court, so long as an action is pending before it, has power, for sufficient cause, to modify or vacate an order made in the course of the action. Section 61-b was not intended to declare an exception to that general rule."

The court, in reviewing an appeal of the plaintiffs in a special proceeding from an order of the Appellate Division denying the inspection of books by plaintiff stockholder for the purpose of inviting other stockholders to come into the derivative action as additional plaintiffs, in the hope of avoiding thereby the necessity of posting security, remitted the proceeding to that court, "for determination, as it may be advised, of the questions of discretion that are therein involved."

Baker et al. v. Macfadden Publications, Inc.,* 300 N. Y. 325, 90 N. E. 2d 876. Abraham Marcus and Israel Beckhardt, of New York City, for appellants. Thomas H. Pinney and John J. Jansen, of New York City, for respondent. Commerce Clearing House Court Decisions Requisition No. 428744.

* The full text of this opinion is printed in the CCH **New York Corporation Law Reporter**, page 9444.

OHIO

Secretary of State upheld in refusing to file charter of proposed nonprofit company to replace a corporation organized for profit.

The relators were signers of articles of incorporation of a proposed nonprofit corporation which was to be organized to purchase the assets of an existing Ohio corporation for profit, consisting of an entire community and, generally, to purchase realty, to convey, develop, lease and operate realty and to devote surplus to a trust for the benefit of the citizens and the development of the community, and to do all things a natural person might do in furtherance of the objectives. The respondent Secretary of State of Ohio had declined to record the articles of incorporation, believing that a real estate business could not be incorporated as a corporation not for profit.

The Supreme Court of Ohio denied a writ of mandamus which the relators sought to obtain to require the Secretary of State to record their articles of incorporation. The court examined the pertinent statute and its prior decisions, posing the question: "Is the proposed corporation to be one 'not involving pecuniary gain or profit' to its members as contended by the relators?" It felt the broad authority sought was inconsistent with the concept of a corporation not dealing in real estate and not for profit. The court concluded:

"In the matter of incorporation the controlling question, of course, is not what part of its authority probably will actually be exercised by the corporation but rather what authority it actually possesses and *may* exercise under the articles recorded. Under the circumstances the respondent Secretary of State properly declined to record the proffered articles of incorporation on the ground that the proposed corporation as the successor to

a corporation for profit fails to meet the statutory requirements for a corporation not for profit. Hence, in the absence of a clear legal duty to record the articles, the demurrer to the petition must be sustained and the writ denied."

State ex rel. Russell et al. v. Sweeney, Secretary of State, 91 N. E. 2d 13. Charles P. Taft, Steer, Strauss & Adair and Charles H. Tobias, Jr., of Cincinnati, for relators. Herbert S. Duffy, Attorney General, and Nelson Lancione of Columbus, for respondent.

foreign corporations

MISSISSIPPI

Threatened suit against Delaware company in Delaware courts enjoined, where company was licensed and doing business in Mississippi and where alleged cause of action arose.

The question raised was whether the complainant below, a Delaware company authorized to do business in Mississippi, where its principal place of of business was located and where all of its directors, officers and employees resided, could enjoin the defendant Mississippi resident from suing in a tort action in Delaware, when it was subject to the same suit in the courts of Mississippi, where the tort was alleged to have occurred.

The Supreme Court of Mississippi affirmed a Chancery Court ruling by making permanent a temporary injunction issued, emphasizing that both the State and Federal courts were open to the defendant in Mississippi and that the injunction would prevent irreparable injury, vexation and harassment, which might be experienced by complainant if compelled to answer a suit in Delaware. Commenting upon the jurisdiction of the courts, the Mississippi Supreme Court observed: "To the broad general rule that state courts cannot enjoin proceedings in Federal Courts, there are limitations and exceptions which rest on the general doctrine that, as between courts of concurrent jurisdiction, that court which first obtains jurisdiction of the subject-matter and the parties retains it to the exclusion of other courts. 28 Am. Jur., Injunctions, Section 217. In the case at bar, the chancery court has in exercise of its power enjoined appellant from filing an action for libel against appellee in the State of Delaware, since manifestly from the original bill he is seeking more to bulldoze appellee into a compromise than to prosecute a good faith suit, and since such course would impose an inequitable hardship and irreparable injury upon appellee, the injunction here would be futile unless it enjoined, as it does, appellant from filing suit in Delaware, in either State or Federal Courts. As stated, the same courts in Mississippi are open to appellant. Although the chancery court in the suit before us has not acquired jurisdiction of the merits, neither have any of the other courts, and it seems

to us, inasmuch as Equity grants full relief, that to protect its process here, the chancery court properly enjoined appellant as a resident citizen of this State from suing appellee in any Delaware Court, under the special circumstances involved, since there is no Federal statute prescribing venue for tort actions in libel."

Poole v. Mississippi Publishers Corporation, 44 So. 2d 467. Chill, Landman, Bryant & Gordon and M. A. Cohen of Jackson, for appellant. H. V. Watkins, P. H. Eager, Jr., Thomas H. Watkins and W. H. Watkins, all of Jackson, for appellee.

NEW YORK

New York suit to compel Delaware corporation to pay dividends dismissed, where reserves, having a bearing upon payment, were found to be created in compliance with charter stipulations.

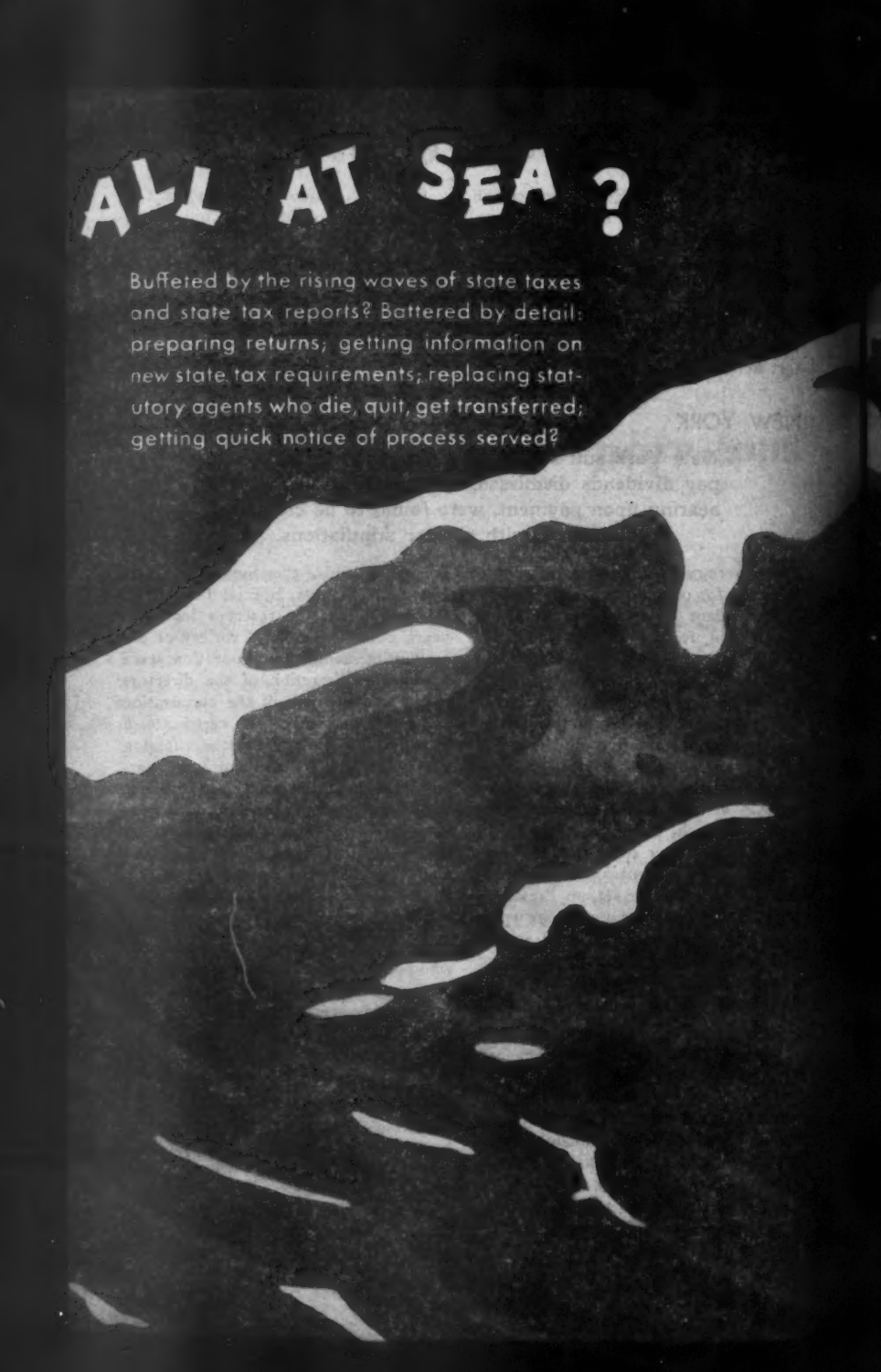
These were representative actions, consolidated for purposes of trial, to compel defendant Delaware oil producing corporation to pay certain dividends for the years 1942 and 1943, claimed to be mandatory by reason of its certificate of incorporation. The certificate provided for the declaration and payment of noncumulative dividends to the holders of Class A stock in each year out of the "consolidated net earnings" as defined, to the extent of two-thirds of such earnings, but not in excess of $1.20 per share for any year. In computing expenses, the corporation was entitled to set up "reserves therefor." All the computations were required to be "as determined in accordance with the accounting practice most generally followed at the time in the oil industry."

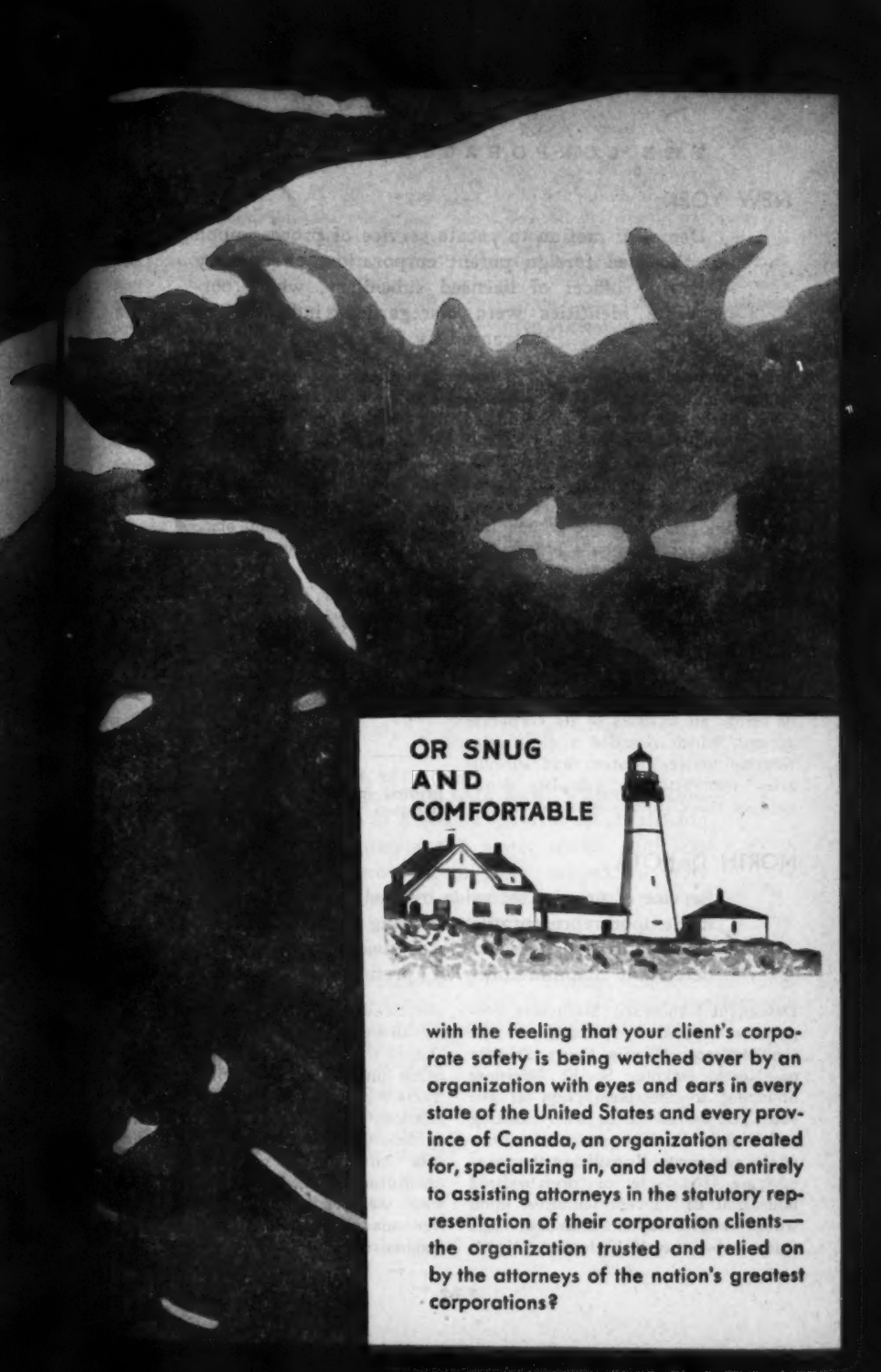
During the two years in question the corporation concededly had sufficient net earnings, exclusive of reserves set up for future contingencies, to pay additional dividends within the maximum specified by the certificate as payable to the holders of Class A shares, but dividends paid such shareholders amounted to 51 cents and 72 cents a share for the respective years. As to controversy relating to the amount of these dividends, the Supreme Court, New York County, Special Term, Part VI, found that the reserves for these years, being based on a variety of uncertainties facing the corporation, were within the discretion of the directors in the management of the corporation and not forbidden by the certificate of incorporation generally or as affecting Class A stockholders, and were permissible or authorized in accordance with the accounting practice most generally followed in the oil industry at the time. Motions to dismiss the complaint were granted, as was defendant's motion for judgment.

A dismissal of the complaint was indicated with respect to a plaintiff who had previously owned voting trust certificates representing Class A shares which had been converted for voting trust certificates representing Class B stock of the corporation prior to the institution of her suit.

Koppel v. Middle States Petroleum Corporation,* 96 N. Y. S. 2d 38. Commerce Clearing House Court Decisions Requisition No. 427970.

*The full text of this opinion is printed in the CCH **New York Corporation Law Reporter**, page 9440.


ALL AT SEA ?
Buffeted by the rising waves of state taxes and state tax reports? Battered by detail: preparing returns; getting information on new state tax requirements; replacing statutory agents who die, quit, get transferred; getting quick notice of process served?



OR SNUG AND COMFORTABLE

with the feeling that your client's corporate safety is being watched over by an organization with eyes and ears in every state of the United States and every province of Canada, an organization created for, specializing in, and devoted entirely to assisting attorneys in the statutory representation of their corporation clients—the organization trusted and relied on by the attorneys of the nation's greatest corporations?

NEW YORK

Denial of motion to vacate service of process upon unlicensed foreign parent corporation, effected by serving officer of licensed subsidiary, where corporate identities were disregarded, indicated as warranted by facts.

Service upon defendant Nevada parent company, not licensed in New York, was effected by serving the alleged sales manager of a subsidiary Michigan corporation, licensed in New York, but not a party defendant. The parent corporation moved for an order to vacate the service on the ground that it was not served upon a proper person. The New York Supreme Court, Kings County, Special Term, Part I, examined data proferred by plaintiff in support of his claim that the separate identity of the subsidiary served was nominal only. Inasmuch as the defendant made no attempt to answer or refute an analysis of its corporate set-ups, which revealed a close relationship between parent and subsidiaries, manifesting a complete disregard of the distinct corporate entities of the subsidiaries, the court found a denial of the motion to dismiss the service warranted. However, it ordered the motion to vacate the service held in abeyance, pending an examination which it directed be held before an official referee for the purpose of eliciting information from officers of the subsidiary, including the individual served.

Rabinowitz v. Kaiser-Frazer Corp.,* New York Supreme Court, Kings County, Special Term, Part I, March 22, 1950; 123 N. Y. L. J. 1019. Commerce Clearing House Court Decisions Requisition No. 429628.

---

* The full text of this opinion is printed in the CCH **New York Corporation Law Reporter**, page 9456.

NORTH DAKOTA

Service of process set aside by Federal court where made upon representative soliciting contracts to procure contracts between local dealer-builders and defendant manufacturer of prefabricated homes.

Defendant unlicensed Minnesota corporation appeared specially in the United States District Court, District of North Dakota, S. E. Division, objecting to the jurisdiction of the court and moved for an order vacating and setting aside the purported service of the summons. Engaged in the manufacture and sale of prefabricated houses, it had a representative, upon whom service upon defendant was made, who travelled through North and South Dakota for the purpose of establishing dealer-builders in those states for defendant, his authority being limited to that activity, and contracts secured by him to establish that relationship being subject to approval at defendant's home office in Minnesota. All shipments subsequently made upon orders received from the dealers, who were independent contractors, were made from points outside North Dakota to the dealers upon their orders

approved in Minnesota. The representative, on occasion, but not generally, received and receipted for moneys due from dealers to defendant. When served, he was in North Dakota endeavoring to adjust a claim of plaintiff dealer-builder.

The court, in granting defendant's motion to set aside the service, noted that the plaintiff and other similar dealers were clearly independent contractors, not agents of the defendant and that the prefabricated houses they sold were their own merchandise. It regarded defendant's representative as having done nothing more in North Dakota than to solicit dealer-builders as such and emphasized that orders sent by the dealer-builders were approved by defendant in Minnesota. "None of the evidence offered," concluded the court, "tends to the conclusion that the foreign corporation was ever present itself doing business in the State of North Dakota."

Anderson v. Page & Hill Homes, Inc.,* 88 F. Supp. 408. Lanier & Lanier of Fargo, for plaintiff. Raymond D. Black of Morley, Cant, Taylor & Haverstock of Minneapolis, Minnesota, for defendant.

* The full text of this opinion is printed in the **State Tax Reporter**, North Dakota, page 303.

taxation

ALABAMA

Corporation, contracting with local business firms, for the exhibition in Alabama theatres of advertising film, prepared outside the state, under contracts approved in another state, held subject to state occupation license tax on advertising by making displays in public places.

Appellant unlicensed Delaware corporation sent traveling representatives into Alabama who first contacted business firms with a view of advertising particular business in local motion picture theatres through the use of short motion picture films to conclude with the name of the firm advertised. Contracts secured with business firms were accepted in Colorado at appellant's home office. Subsequently, these representatives arranged with local theatres, through contracts also accepted in Colorado, for the exhibition of the films, which were prepared outside of Alabama, shipped from Colorado, and at all times remained the property of the appellant.

The question raised on appeal to the Supreme Court of Alabama was whether the appellant was liable for the State occupation license tax prescribed by Section 456, Title 51, Code, on one engaged in the business of billposting or advertising by making displays in public places. The court, in affirming a judgment holding appellant liable for the tax, regarded the ques-

tion as not being controlled by any principle of interstate commerce, as the taxable event occurred after the completion of interstate commerce. The court remarked: "It is not the activity of the representative of the appellant in this state in securing the contract of shipment in interstate commerce which is sought to be taxed by Section 456, supra. It is the service performed in this state of screening the films for advertising purposes, which is done wholly in this State, that is made the basis of the tax."

*Alexander Film Co. v. State,** 44 So. 2d 581. Rushton, Stakely & Johnston of Montgomery, for appellant. A. A. Carmichael, Attorney General, and Gardner F. Goodwyn, Jr., Assistant Attorney General, for appellee.

* The full text of this opinion is printed in the **State Tax Reporter,** Alabama, page 3816.

FLORIDA

Corporation, maintaining four places of business where sales of goods which were stored were forbidden, ruled not maintaining "stores" so as to be subject to chain store tax.

A question raised concerned whether relator's places of business were "stores" within the meaning of the Florida chain store tax law so as to subject it to chain store tax liability. The relator company maintained a building in each of four Florida cities in which it maintained an office and a supply of its articles being sold, principally through installment sales. The rules of the company forbade the display of the articles in the buildings and provided that any prospective customers were not to be permitted to examine the merchandise, but that they were to be requested to leave their names and addresses so that a salesman might call upon them. Each place of business bore relator's name but each had posted thereat a placard reading: "Positively no merchandise sold either at wholesale or retail in this warehouse," followed by relator's name. Sales of its merchandise were made by traveling salesmen carrying samples from house to house, taking orders, who made deliveries either from stock carried or at a later time, collection being effected in installments by the salesmen or other collectors.

The Supreme Court of Florida, Special Division B, ratified a report and recommendations of a referee, who had been directed to take testimony, which concluded that relator was not subject to the tax, as its places of business were not "stores."

L. B. Price Mercantile Co. v. Gay, Comptroller, 44 So. 2d 87. Rogers, Towers & Bailey of Jacksonville, for petitioner. Richard W. Ervin, Attorney General, Fred M. Burns and T. Paine Kelly, Assistant Attorneys General, for respondents.

state legislation

Arizona—Under H. B. 10, machinery and equipment used exclusively in the operation and maintenance of any manufactory located within the state are to be assessed for property tax purposes at 50% of their book value.

Kentucky—H. B. 284, effective June 15, 1950 will bring about a change in 1951 in the due date of the filing of the List of Resident Stockholders and Bondholders by requiring its filing on March 15, 1951, instead of June 1 of that year.

H. B. 280 provides that any state or political subdivision thereof shall have the right to sue in the courts of Kentucky to recover any tax which may be owing to it when like right is accorded to the State of Kentucky and its political subdivisions by such state, whether such right is granted by statutory authority or as a matter of comity.

Mississippi—The retail sales and use tax on automobiles and trucks has been increased from 1% to 2%, effective from and after July 1, 1950.

New York—The due date of the withholding agent's return for personal income tax purposes has been changed from February 15 to March 1 by Ch. 263.

Chapter 647 contains provisions amending the procedure relating to the determination of the value of the stock of objecting stockholders on the sale of assets, merger and consolidation.

New York City—Chapter 813, amended the city's authority to tax the carrying on of business, other than a financial business, measured by gross receipts, so as to narrow the tax on manufacturers or shippers not having offices in the city, who sell through manufacturers' agents, independent sales agencies or resident salesmen.

North Carolina—As long as a foreign corporation has not been authorized to do business in North Carolina or file notice that it will sell its good will in this state, there is no objection to a domestic corporation having the same name as a corporation of another state. (Opinion of the Attorney General, State Tax Reporter, North Carolina, 1-202.)

Virginia—The signatures of officers and the seal of a corporation, engraved or printed, on its bonds or debentures may be facsimiles, under Chapter 304, effective July 1.

Chapter 493 provides for contingent future credits against the income taxes of corporations and individuals, the allowance of the credits and the applicable rate being dependent upon the amount of revenue paid into the State Treasury from certain sources.

Chapter 280 adds a provision to Sec. 13-190 of the 1950 Code that "in the case of any corporation which is a domestic corporation both of this State and also of any other State, meetings of stockholders may be held either in this State or in such other State."

appealed to the supreme court

*The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.**

OCTOBER 1949 TERM

GEORGIA. Docket No. 454. *Georgia Railroad & Banking Company v. Redwine,* United States District Court, Northern District of Georgia, July 29, 1949. (The Corporation Journal, February, 1950, page 92.) Property tax exemption—suit against state in Federal Court. **Appeal filed, November 12, 1949, Jurisdiction noted, December 5, 1949. February 20, 1950:** *"Per curiam:* Inasmuch as the Attorney General of Georgia stated at the bar of this Court that plain, speedy and efficient State remedies were available to appellant, the cause is ordered continued for such period as will enable appellant with all convenient speed to assert such remedies." (70 S. Ct. 472.)

OKLAHOMA. Docket No. 658. *Steinway v. Majestic Amusement Company et al.,* U. S. C. A., 10th Circuit, December 28, 1949; rehearing denied, February 9, 1950. (The Corporation Journal, April, 1950, page 127.) Service of process—doing business—foreign corporation owning and voting majority stock in domestic combition—local censorship. **Petition for writ of certiorari field, March 15, 1950. Certiorari denied, May 1, 1950.**

PENNSYLVANIA. Docket No. 775. *Kroese v. General Steel Castings Corporation et al.,* 179 F. 2d 760. (The Corporation Journal, April, 1950, page 125.) Jurisdiction—indispensable parties—declaration of dividends. **Petition for writ of certiorari filed, April 26, 1950.**

TENNESSEE. Docket No. 680. *United Artists Corporation et al. v. Board of Censors of the City of Memphis et al.,* 225 S. W. 2d 550. (The Corporation Journal, May, 1950, page 149.) Doing business—use of state courts—film exhibibition—local censorship. **Petition for writ of certiorari filed, March 15, 1950. Certiorari denied, May 8, 1950.**

---

* Data compiled from **CCH U. S. Supreme Court Bulletin, 1949-1950.**

Kentucky Property Tax Assessments

It was stated on page 143 of the May Corporation Journal that taxable property in Kentucky was assessed as of July 1 for state and county tax purposes and for city tax purposes in certain cities. Under present legislation, July 1, 1950 will be omitted as an assessment date for state and county purposes, assessments being made as of January 1, 1951 and as of January 1 thereafter of property heretofore assessable for state and county purposes as of July 1.

regulations and rulings

Florida—The mere fact that a foreign corporation is qualified to do business in Florida is not sufficient to create a business situs in the state authorizing the taxation of the intangibles of the corporation. For intangibles to acquire a business situs, apart from the domicile of the corporation, they must have become localized in some independent business or investment away from the corporation's domicile so that its substantial use and value primarily attach to and become an asset of the outside business. (Opinion of the Attorney General to the State Comptroller, State Tax Reporter, Florida, ¶ 29-017.)

The transactions of a New York corporation, acting as trustee for a number of savings banks, in the purchase of Florida real estate mortgages by assignment from a Florida corporation as investments for said savings banks, the assignments to be delivered and the consideration to be paid in New York, do not constitute engaging in business in Florida, in that the transactions are to be consummated in New York. (Opinion of the Attorney General to the Secretary of State, State Tax Reporter, Florida, ¶ .402.)

Michigan—A note payable secured by a mortgage payable, given in connection with the business from which a note and mortgage receivable is derived, is deductible from the note and mortgage receivable in computing the intangibles property tax. (Opinion of the Attorney General to State Department of Revenue, State Tax Reporter, Michigan, ¶ 200-020.)

Corporations are precluded from acquiring an assumed name by the filing of an assumed name certificate in order to protect the public generally from fraud and deception. However, the acquisition by a corporation of all of the stock of another corporation whereby it becomes the sole stockholder and owner of the assets thereof, including the name of the purchased corporation, does not place such a corporation within the purview of the above restriction. (Opinion of the Attorney General, State Tax Reporter, Michigan, ¶ 33-790.)

Nevada—Chapter 176, Laws of 1949, reducing the minimum initial filing fees of corporations and otherwise increasing such fees is constitutional. (Opinion of the Attorney General, State Tax Reporter, Nevada, ¶ 4-001.)

North Carolina—As long as a foreign corporation has not been authorized to do business in North Carolina or filed notice that it will sell its good will in that state, there is no objection to a domestic corporation having the same name as a corporation of another state. (Opinion of the Attorney General, State Tax Reporter, North Carolina, ¶ 1-202.)

Washington—By Administrative Ruling No. 11, Vol. VI, the State Tax Commission has ruled, in connection with the Business and Occupation Tax, that local retailers and wholesalers making sales to Washington customers, where delivery is made from out-of-state direct to the customer in Washington, should deduct the amount of such sales from their taxable gross proceeds of sales. (State Tax Reporter, Washington, ¶ 68-999 (31).)

some important matters

For June, July, August, September and October

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

Alaska—Returns of Tax Withheld at the source due on or before July 31 and October 31.—Domestic and Foreign Corporations.

Arizona—Report to Corporation Commission and Registration Fee due during June.—Domestic and Foreign Corporations.

Arkansas—Anti-Trust Affidavit due on or before August 1.—Domestic and Foreign Corporations.

Annual Franchise Tax due on or before August 10.—Domestic and Foreign Corporations.

California—Quarterly Retail Sales Tax Returns and Payments due on or before July 31 and October 31.—Domestic and Foreign Corporations.

Franchise Tax based on net income. Second installment due on or before September 15.—Domestic and Foreign Corporations.

Connecticut—Annual Report due on or before August 15 (if corporation was organized or qualified between July 1 and December 31 of any previous year).—Domestic and Foreign Corporations.

Quarterly Retail Sales Tax Returns and Payments due on or before July 30 and October 30.—Domestic and Foreign Corporations.

Delaware—Annual Franchise Tax due between April 1 and July 1.—Domestic Corporations.

Dominion of Canada—Income Tax Return due on or before June 30.—Domestic and Foreign Corporations.

Florida—Annual Report and Fee due on or before July 1.—Domestic and Foreign Corporations.

Idaho—Annual Statement and Annual License Tax due between July 1 and September 1.—Domestic and Foreign Corporations.

Illinois—Annual Franchise Tax due on or before July 1, but may be paid up to July 31 without penalty.—Domestic and Foreign Corporations.

Indiana—Annual Report due within 30 days after June 30.—Domestic and Foreign Corporations.

Quarterly Gross Income Tax Returns and Payments due on or before July 31 and October 31.—Domestic and Foreign Corporations.

Iowa—Annual Report due between July 1 and August 1.—Domestic and Foreign Corporations.

Statement of Capital and Property Increase due at the time of filing the Annual Report in July.—Foreign Corporations.

Report of Transfers of Stock due on or before July 1.—Domestic Corporations.

Quarterly Retail Sales Tax Returns and Payments due on or before July 20 and October 20.—Domestic and Foreign Corporations.

Kentucky—Statement of Existence due in June.—Foreign Corporations. Verification Report as to process agent due in June.—Domestic and Foreign Corporations.

Louisiana—Franchise Tax Report and Tax due on or before October 1.—Domestic and Foreign Corporations.

Maine—Annual Franchise Tax due September 1; delinquent one month later.—Domestic Corporations.

Michigan—Annual Report and Franchise Tax due during July and August.—Domestic and Foreign Corporations.

Report of Unclaimed Moneys, Securities, Credits, etc., due on or before June 30.—Domestic and Foreign Corporations.

Mississippi—Annual Report and Fee to Factory Inspector due in July.—Domestic and Foreign Corporations employing 5 or more persons in Mississippi.

Annual Franchise Tax Report and Tax due on or before July 15.—Domestic and Foreign Corporations.

Missouri—Annual Registration Statement and Anti-Trust Affidavit due on or before July 31.—Domestic and Foreign Corporations.

Quarterly Retail Sales Tax Returns and Payments due on or before July 15 and October 15.—Domestic and Foreign Corporations.

Montana—Annual License Tax Based on net income due on or before June 15.—Domestic and Foreign Corporations.

Nebraska—Annual Report and Franchise (Occupational) Tax due on or before July 1.—Domestic Corporations.

Annual Report and Franchise (Occupational) Tax due during July.—Foreign Corporations.

Nevada—Annual List of Officers and Designation and Acceptance of Resident Agent due on or before July 1.—Domestic and Foreign Corporations.

North Carolina—Annual Franchise Tax Report and Tax due on or before July 31.—Domestic and Foreign Corporations.

North Dakota—Corporation Report due during July.—Domestic Corporations.

Quarterly Retail Sales Tax Returns and Payments due on or before July 20 and October 20.—Domestic and Foreign Corporations.

Ohio—Annual Franchise Tax due July 15.—Domestic and Foreign Companies.

Retail Sales Tax Returns and Vendors' Excise Tax due on or before July 31.—Domestic and Foreign Corporations.

Oklahoma—Annual Capital Stock Affidavit due between July 1 and August 1.—Foreign Corporations.

Annual Franchise Tax Report and Tax due on or before August 31.—Domestic and Foreign Corporations.

Oregon—Annual Report due during June.—Domestic and Foreign Corporations.

License fee due within 30 days after July 15.—Domestic Companies.

Returns of Withholding at the source due on or before July 30 and October 30.—Domestic and Foreign Corporations.

License Fee due between July 1 and August 15.—Foreign Companies.

Report of Abandoned Property due on or before September 1.—Domestic and Foreign Corporations.

Rhode Island—Semi-Annual Report to Division of Industrial Inspection due in October and April.—Domestic and Foreign Corporations employing 5 or more persons in Rhode Island.

South Dakota—Quarterly Retail Sales Tax Returns and Payments due on or before July 15 and October 15.—Domestic and Foreign Corporations.

Tennessee—Annual Privilege (Franchise) Tax Return and Payment, Annual Report and Tax and Excise Tax Report and Tax due on or before July 1.—Domestic and Foreign Corporations.

Report of Dividends paid to residents due on or before July 1.—Domestic and Foreign Corporations.

United States—Second and Third Installments of Income Tax due June 15 and September 15, respectively.—Domestic Corporations and Foreign Corporations having offices or places of business in the United States.

Withholding at source due on or before July 31 and October 31.—Domestic and Foreign Corporations.

Washington—License Fee due July 1.—Domestic and Foreign Corporations.

West Virginia—License Tax Statement due July 1.—Domestic Companies.

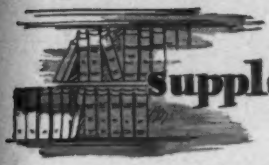
Annual License Tax due July 1.—Domestic and Foreign Companies.

Fee to State Auditor as Attorney in Fact due on or before July 1.—Foreign Corporations and those Domestic Corporations whose principal place of business or chief works are located in other states.

Quarterly Business and Occupation (Gross Sales) Tax Returns and Payments due on or before July 30 and October 30.—Domestic and Foreign Corporations.

Wisconsin—Second Installment of Income Tax due on or before August 1.—Domestic and Foreign Corporations.

Wyoming—Annual Statement and License Tax due on or before July 1.—Domestic and Foreign Corporations.



supplementary literature

In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York 5, N. Y.

Delaware Corporations (1949 Edition). Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation.

Some Contracts Have False Teeth. Interesting case-histories showing advisability of contractor getting lawyer's advice before undertaking construction work outside home state, even for federal government.

What Constitutes Doing Business. (Revised to March 1, 1948.) A 187-page book containing brief digests of decisions selected from those in the various states as indicating what is construed in each state as "doing business."

What Does a Transfer Agent Do? This illustrated pamphlet gives the highspots of a transfer agent's services in 3 minutes reading time, with explanatory text if you want to read further. Of value to small as well as large corporations.

More Sales with Spot Stocks. Advantages found by many manufacturers in carrying spot stocks at strategic shipping points—and preliminary statutory measures necessary to protect corporate status.

Suppose the Corporation's Charter Didn't Fit! Shows how charter provisions which suit well enough at time of organization may be handicaps for the corporation in later life—some measures to avoid them that a lawyer may help his client to take.

When a Corporation Is P. W. O. L. A simple explanation of the reasons for and purposes of the foreign corporation laws of the various states, and illustrations of when and how a corporation makes itself amenable to them. Of interest both to attorneys and to corporation officials.

After the Agent for Service Is Gone. What will happen *then* if suit is brought against the company? Some examples taken from actual court cases, with full texts of the final decisions.

We've Always Got Along This Way. A 24-page pamphlet of cases in various states in which corporation officials who had thought they were getting along very well with statutory representation by a business employe suddenly found themselves in trouble.

Judgment by Default. Gives the gist of Rarden v. Baker and similar cases, showing how corporations qualified as foreign in any state and utilizing their business employes as statutory representatives are sometimes left defenseless in personal damage and other suits.

THE CORPORATION TRUST COMPANY
120 Broadway, New York 5, N. Y.

The CORPORATION JOURNAL

The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices.